

## **REMARKS**

### **1. Status of the Claims**

Claims 1, 2, 4-8, 14, 15, 22-25, and 80-100 are pending in the application. Claims 14, 15, 22-25, and 80 stand withdrawn. Claims 1, 2, 4, 6, 7, 81-83, and 90-96 are allowed.

Claims 5, 8, 84-89, and 97-100 stand allegedly rejected. Claims 86 and 87 stand objected to.

Applicants note for clarity of the record that the Office Action Summary lists claims 86 and 87 as both rejected and objected to. However, the body of the Office Action only lists claims 86 and 87 objected to under 37 C.F.R. § 1.75(c). Therefore, claims 86 and 87 are allowable but for the rejection under § 1.75(c).

Additionally, Applicants note that claims 88 and 89 are indicated on the Office Action Summary as being both allowed and rejected. Yet, in the body of the Office Action, claims 88 and 89 stand rejected under 35 U.S.C. § 112, second paragraph. Applicants have addressed the rejection.

### **2. Status of the Drawings**

Applicants note with appreciation the indication that the drawings filed December 10, 2003, are acceptable.

### **3. Acknowledgement of Information Disclosure Statements**

Applicants note with appreciation the acknowledgement of the Information Disclosure Statements previously filed.

### **4. Election/Restrictions**

Applicants note the finality of the restriction. Applicants reserve the right to file a Petition on the restriction requirement.

### **5. Claim Objections**

Claims 86 and 87 stand objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. The Office asserts that “mesenchymal cell” does not further limit “bone cell”.

Applicants have amended claims 86 and 87 to depend from claims 6 and 8 instead of claims 84 and 85 respectively. Applicants have further amended claims 86 and 87 to recite an “isolated host cell” and not a “bone cell” in view of the amendments. As the cell is now any isolated host cell, recitation of mesenchymal cell is further limiting. Accordingly, Applicants respectfully request withdrawal of the objection.

Applicants further note that claims 86 and 87 were only objected to in the body of the Office Action. Therefore, Applicants submit that these claims are now allowable.

#### **6. Claim Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 5, 88, and 89 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Contrary to the Office Action Summary, which reflects claims 88 and 89 as allowable, claims 88 and 89 apparently stand rejected as indefinite. Without acquiescing as to the merit of the rejection or the issue of rejection clarity, Applicants have amended claim 5 by deleting “and a replicon operative in an isolated host cell”. With the amendment to claim 5, Applicants submit the rejection is mooted. Applicants further note that there is no other rejection pending against claims 5, 88 and 89. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of claims 5, 88, 89, and all the claims which depend therefrom.

#### **7. Double Patenting**

Claims 8, 84-87, and 97-100 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 162-166 of copending application No. 10/374,979.

Applicants respectfully request that the rejection on the ground of nonstatutory obviousness-type double patenting be held in abeyance until the rejection is no longer provisional. At that time, Applicants will file a terminal disclaimer, if necessary, or argue that the claims are patentably distinct based on the prosecution that has occurred in both cases. To make an argument now would be premature.

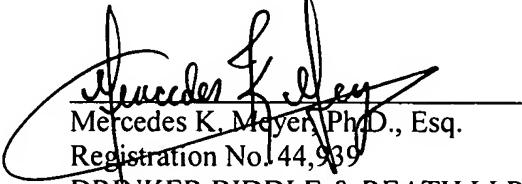
**CONCLUSION**

Should the Examiner have any questions or comments regarding Applicants' amendments or response, she is asked to contact Applicants' undersigned representative at (202) 842-8821. Please direct all correspondence to the below-listed address.

In the event that the Office believes that there are fees outstanding in the above-referenced matter and for purposes of maintaining pendency of the application, the Office is authorized to charge the outstanding fees to Deposit Account No. 50-0573. The Office is likewise authorized to credit any overpayment to the same Deposit Account Number. The undersigned is signing in her authority under 37 C.F.R. § 1.34(b).

Respectfully submitted,

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